United Nations CERD/C/TJK/CO/9-11

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined ninth to eleventh periodic reports of Tajikistan*

1. The Committee considered the combined ninth to eleventh periodic reports of Tajikistan (CERD/C/TJK/9-11), submitted in one document, at its 2562nd and 2563rd meetings (see CERD/C/SR.2562 and SR.2563), held on 10 and 11 August 2017. At its 2576th meeting (see CERD/C/SR.2576), held on 21 August 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined ninth to eleventh periodic reports of the State party. The Committee notes with satisfaction that the State party's reports generally comply with the reporting guidelines. It appreciates the presence of a high-level delegation, and the frank and constructive responses it provided to the questions and comments raised by the Committee.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2014, and of the Convention on the Prevention and Punishment of the Crime of Genocide in 2015.

4. The Committee also welcomes the State party's efforts to amend its legislation and policies to better protect human rights and implement the International Convention on the Elimination of All Forms of Racial Discrimination, including:

(a) The revision of the Law on Refugees (2014);

(b) The new Constitutional Law on Nationality (2015);

(c) The Trafficking in Persons and Assistance to Victims Act (2014), and the Comprehensive Programme to Combat Trafficking in Persons (2011-2013 and 2014-2016);

(d) The ratification of the Agreement on Cooperation among Ministries of Internal Affairs of State Members of the Commonwealth of Independent States in Combating Trafficking in Persons (2014-2018);

(e) Various amendments to the Criminal Code (2013-2015) to strengthen the role and expand the powers of the law enforcement agencies in combating trafficking in persons;

* Adopted by the Committee at its ninety-third session (31 July-25 August 2017).

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(f) The introduction of several provisions to prevent statelessness, including among children, and to facilitate the naturalization of certain categories of stateless persons under the simplified procedure;

(g) The creation of an ombudsman for children (2016).

C. Concerns and recommendations

Data collection

5. The Committee notes the steps taken by the State party to compile some disaggregated data on the ethnic composition of its population. It regrets, however, that such data are not easily accessible to the public and are largely missing from the combined ninth to eleventh periodic reports it submitted. The Committee reiterates the importance of comparative indicators on the enjoyment of the rights under the Convention by members of ethnic minorities, Roma/Jughi and non-citizens, including women and children, in areas such as health, life expectancy and mortality, employment, education, access to justice, representation in public institutions or detention. Such indicators are needed to assess progress and difficulties in implementing the provisions of the Convention (arts. 1 and 5). The Committee also regrets the absence of disaggregated data on Pamiri and Yaghnobi ethnic minority groups; both were included in the 2010 census as ethnic Tajiks.

6. **The Committee reiterates its view on the importance of compiling and making available accurate disaggregated data on the socioeconomic and cultural status and conditions of the various groups in the population. The Committee considers this information to be a useful tool for the State party to secure the equal enjoyment of the rights under the Convention to all, and to avoid discrimination on ethnic and national grounds (CERD/C/TJK/CO/6-8, para. 8). Such data should be disaggregated by various grounds, including ethnicity, nationality, sex and age, and include information on the situation of Pamiri and Yaghnobi communities. The Committee recommends that the State party ensure that a comprehensive set of disaggregated data is sought in the next population census (2020).**

Definition and criminalization of racial discrimination

7. The Committee notes that the State party has in place a number of relevant legal provisions, including provisions prohibiting racial discrimination, but reiterates its concern that the State party has yet to amend its legislation in order to adopt a comprehensive definition of racial discrimination in line with the Convention and covering all grounds of racial discrimination (art. 1). The Committee further notes with concern that the existing legislation does not cover all rights and fundamental freedoms under the Convention, and that it is not in full compliance with its article 4, given that incitement to racial discrimination and acts of racially motivated violence are not criminalized (arts. 4-5).

8. **The Committee reiterates its recommendation (CERD/C/TJK/CO/6-8, paras. 9-10) that the State party review its position that a definition of racial discrimination in line with the Convention is not necessary. It urges the State party to amend or enact legislation so as to include an overarching definition of racial discrimination in line with the Convention (art. 1), and combat racial discrimination in all spheres of public life, including political, economic, social and cultural life (art. 5). The Committee also recommends that the State party condemn and criminalize all forms and manifestations of racial discrimination as set out in article 4 of the Convention. The Committee also wishes to be informed about the extent to which the burden of proof before a State court is on the person affected by racial discrimination.**

Absence of court cases on racial discrimination

9. The Committee notes the information provided by the State party regarding the continued absence of complaints regarding acts of racial discrimination received by law enforcement, investigative bodies, the Office of the Ombudsman and the courts. The

Committee reiterates that the absence of complaints is not necessarily positive; it may indicate a lack of information or trust in the authorities among the population (art. 6).

10. **In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reiterates its previous recommendation (CERD/C/TJK/CO/6-8, para. 11) and urges the State party to conduct an in-depth analysis of the absence of complaints. The Committee further recommends that the State party undertake efforts to make law enforcement and judicial officers aware of the provisions of the Convention and build their relevant capacity, and that it raise public awareness about the rights under the Convention, including the right to effective protection and remedies.**

Participation in public and political life

11. The Committee remains concerned at the unequal representation of ethnic minorities within public institutions at the federal as well as at the local levels, which is not in proportion to their numbers in the overall population. The Committee also notes that the data provided by the State party do not include information on the representation of women from ethnic minority groups in public and political life. The Committee further expresses its concern about the fact that minority groups are not adequately consulted before decisions to change place names or the names of other public spaces are effected. The Committee notes that the previous names had an ethnic minority origin (arts. 1, 2 and 5).

12. **The Committee urges the State party to ensure the equitable public and political representation and participation of persons belonging to ethnic minorities, including women. It recommends that the State party improve the representation of these persons within all public institutions at the federal and local levels, including through the adoption of special measures.**

Situation of Roma/Jughi community

13. The Committee expresses its concerns that structural discrimination faced by Roma/Jughi prevents them from enjoying their rights and fundamental freedoms, and notes that Roma/Jughi women and girls often face discrimination on multiple grounds, including ethnicity and gender. In particular, the Committee is concerned about the challenges faced by Roma/Jughi in obtaining personal documents, registration at their place of residence, legalization of housing, access to quality education, health, social services, and protection against exploitation and harmful traditional practices. The Committee reiterates its regret that the State party does not recognize the need to develop a concrete plan of action or strategy to protect Roma/Jughi against discrimination and stigmatization, and to promote their human rights (art. 5).

14. **The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, reiterates its previous recommendation (CERD/C/TJK/6-8, para. 13), and urges the State party to adopt a strategy or plan with a view to improving the situation of Roma/Jughi, including women and girls.**

Situation of refugees and asylum seekers

15. The Committee remains concerned about regulations 325 and 328, which restrict the freedom of movement of refugees and asylum seekers, the majority of whom are from Afghanistan, by forbidding them to live in specific areas, in particular Dushanbe and Khujand. The Committee also remains concerned about the challenges they consequently face in accessing employment, health, education and other basic services. The Committee further regrets that asylum seekers face a significant risk of refoulement, owing to the lack of effective access to fair and efficient asylum procedures, the penalization of irregular stay or entry and harsh administrative measures applied by the State party for non-compliance with freedom of movement restrictions (arts. 1 and 5).

16. **Bearing in mind its general recommendation No. 22 (1996) on article 5 of the Convention on refugees and displaced persons, the Committee reiterates its recommendation (CERD/C/TJK/CO/6-8, para. 14) that the State party lift regulations**

325 and 328, and repeal article 499 (3) of the Administrative Code, so that asylum seekers and refugees can enjoy freedom of movement and residence on an equal footing with other non-nationals, and the right to work, health care, education and other basic services. The Committee also recommends that the State party, in line with the Convention, take all the necessary measures to ensure that all asylum seekers, regardless of their nationality, have effective access to fair and efficient asylum procedures and are not penalized for irregular entry or stay.

Situation of stateless persons

17. The Committee welcomes the efforts undertaken by the State party to identify and register stateless persons, the majority of whom are women and children, who are facing an array of protection challenges owing to their lack of nationality. It also welcomes the efforts undertaken by the State party to finalize its Amnesty Law in order to regularize the status of stateless persons and persons with undetermined nationalities (art. 5).

18. **The Committee encourages the State party to continue its measures to ensure the identification, registration and regularization of stateless persons, while ensuring the inclusion of disadvantaged groups such as Roma/Jughi (art. 5). The Committee also recommends that the State party adopt the Amnesty Law and accede to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

Combating human trafficking

19. The Committee notes the efforts undertaken by the State party to combat human trafficking and assist victims. It remains concerned that Tajikistan continues to be a source of trafficking in women and children, in particular those from vulnerable groups, including minorities, refugees and asylum seekers (art. 5).

20. **The Committee encourages the State party to continue its efforts to combat this scourge by prosecuting perpetrators, and providing protection, assistance and reparation to victims of trafficking, including in cooperation with neighbouring States.**

Discriminatory law against non-citizens

21. The Committee reiterates its concern regarding the amendment of the Family Code in 2011 restricting the right of foreigners and stateless persons, including migrants, to marry Tajik women, which has a discriminatory effect, in violation of the Convention. The Committee takes note of the State party's declared intention to protect Tajik women from human trafficking. It is, however, of the view that protective measures should never be in violation of fundamental rights and freedoms, including the right to marriage and choice of spouse, on the basis of equality of men and women. The Committee further notes that couples that are denied the right to civil marriage often marry exclusively according to Islamic custom (*nikohh*), which may deny women and children legal and economic protection if marriages are dissolved (arts. 1, 2, 5 and 6).

22. **Taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee reiterates its recommendation (CERD/C/TJK/CO/6-8, para. 16) that the State party review its legislation to bring it into full compliance with its international obligations and the Convention; in particular, the State party should ensure that non-citizens are afforded effective enjoyment of the rights mentioned in article 5 of the Convention without discrimination. The Committee recalls that States parties have the duty to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status and that the implementation of legislation does not have a discriminatory effect on non-citizens.**

Mandate of the Ombudsman

23. The Committee welcomes the efforts undertaken by the State party to adopt a new strategy for the Ombudsman, which includes steps to solidify the protection of human rights and improve access to justice. The Committee remains concerned, however, that the

Ombudsman is not fully independent, and further notes that the Ombudsman was accredited with "B status", which means that it is only partially in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

24. **In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee reiterates its recommendation (CERD/TJK/CO/6-8, para. 17) that the State party guarantee the independence of the Office of the Ombudsman by providing it with adequate human and financial resources to carry out its mandate, including promoting and monitoring the rights under the Convention. The Committee further encourages the State party to take the necessary measures to raise the level of the Office of the Ombudsman or to establish a national human rights institution in compliance with the Paris Principles.**

Promotion of minority languages

25. While the Committee recognizes the efforts undertaken by the State party to increase the number of textbooks in minority languages, to train teachers and to promote the further development of ethnic minority languages, it is concerned about the decrease in instruction in Uzbek, Russian, Kyrgyz and Turkmen, and the absence of the Pamiri and Yaghnobi languages from the educational curriculum. The Committee also notes the planned reform of the State party to introduce a requirement for students to write an essay in Tajik when taking university entrance exams, and finds that, while ensuring knowledge of the State language among members of ethnic minorities is an important consideration, it is crucial that efforts made to this end do not put members of minority groups at a disadvantage (art. 5).

26. **The Committee recommends that the State party take measures to ensure that ethnic minorities have access to instruction in minority languages, taking into account the particular needs and interest of these groups when developing strategies and programmes to this end. The Committee encourages the State party to continue its efforts to ensure that schools attended by minority students have the necessary equipment and capacities. The Committee also encourages the State party to support the preservation and development of the Pamiri and Yaghnobi languages, through academic research, and the introduction of cultural and language tools in educational curricula and in the media.**

Combating prejudices

27. The Committee is concerned about the prejudices held by the general public towards Roma/Jughi and other minorities, such as Pamiri. It welcomes the efforts of the State party to mount awareness campaigns to promote tolerance, understanding and solidarity among the population towards Roma/Jughi (art. 7).

28. **The Committee recommends that the State party further enhances its efforts to mount awareness campaigns, with a view to combating prejudices and negative stereotypes towards minority ethnicities such as Roma/Jughi and Pamiri, and promoting understanding, tolerance and friendship among all ethnicities.**

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

29. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in April 2009.**

International Decade for People of African Descent

30. **In the light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Consultations with civil society organizations

31. **The Committee recommends that the State party consult and increase its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Declaration under article 14 of the Convention

32. **The Committee urges the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.**

Amendment to article 8 of the Convention

33. **The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.**

Common core document

34. **The Committee invites the State party to update its common core document submitted in 2004 (HRI/CORE/1/Add.128) in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.**

Follow-up to the present concluding observations

35. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its follow-up to the recommendations contained in paragraphs 12 and 14 above.**

Paragraphs of particular importance

36. **The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8, 16, 18 and 22 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.**

Dissemination

37. **The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.**

Preparation of the next report

38. **The Committee recommends that the State party submit its combined twelfth to thirteenth periodic reports by 10 February 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.**